



Department of Defense Fact Sheet Changes to Military Commission Procedures

The Department of Defense has issued several changes to the military commissions process designed to improve commission procedures and promote efficient trials, including by making the process more like a judge and jury model. These changes are reflected in Military Commission Order No. 1 issued Aug. 31, 2005. The table below summarizes the changes between the original commission order issued March 21, 2002 and the revised document.

Original Military Commission Order No. 1
(March 21, 2002)

Revised Military Commission Order No. 1
(Aug. 31, 2005)

Number of Members

- Each commission was comprised of no more than seven members (including the presiding officer)
 - Each commission was also required to have “one or two” alternate members
- In a non-capital case, a commission is comprised of a presiding officer and at least three other members
 - In a capital case, a commission is comprised of a presiding officer and at least seven other members
 - The Appointing Authority has been granted discretion to determine the number of alternates needed for each commission (“one or more”)

Duties of the Presiding Officer

- Required all commission members, including the presiding officer, to decide all questions of law and fact
- Requires the presiding officer to rule upon all questions of law, challenges of members for cause, and interlocutory questions
 - Does not permit the other members to participate in deciding most legal questions
 - Continues to allow a majority of the other members to overrule the presiding officer on rulings regarding the admissibility of evidence, in accordance with the President’s order
 - Requires the presiding officer to instruct the other members on the law
 - Allows the presiding officer to conduct hearings outside the presence of the other members for certain purposes in the same manner as a judge.

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Voting

- Required all commission members, including the presiding officer, to vote on findings and sentence
- Does not permit the presiding officer to vote on findings and sentence

Accused's Presence at Trial

- Provided that an accused *may* be present to the extent consistent with the need to protect classified information and other national security interests.
- Clarifies that an accused ~~shall~~ be present to the extent consistent with the need to protect classified information and other national security interests.

Access to Protected Information

- Allowed an accused and civilian defense counsel to be denied access to protected information (although access for detailed military defense counsel required) if required by national security, law enforcement interests, and applicable law
- Provides Accused and Civilian Defense Counsel access to protected information to the maximum extent consistent with national security, law enforcement interests, and applicable law.
- If access to protected information is denied and an adequate substitute is unavailable, the presiding officer must exclude it the admission would result in denial of a full and fair trial

Review Panel

- Review Panel had 30 days to review a case
- Review Panel now has 75 days, after receipt of the record of trial, to review a case